

37 Am. Jur. 2d Fraud and Deceit § 60

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Fraud and Deceit

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IV. False Representations

A. In General

§ 60. Manner of making; implied representations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  9

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[Civil liability of witness falsely attesting signature to document, 96 A.L.R.2d 1346](#)

[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

Although it has been observed that there can generally be no fraud without an express misrepresentation,¹ a misrepresentation may, but need not, be express;² it may be implied³ or inferable from circumstances that are in fact equivalent to a positive representation.⁴ Representations may be made by words,⁵ i.e., an affirmative statement that is itself false;⁶ by acts and conduct⁷ which communicate a representation that is false and material;⁸ or by concealing or not disclosing certain facts which render the facts that are disclosed misleading.⁹

Observation:

Some jurisdictions treat concealment of any facts that one has an obligation to disclose with the intent to defraud as having the same legal effect as an affirmative misrepresentation¹⁰ while relieving a defendant of liability in tort on the basis of actual fraud or intentional concealment in the absence of a duty to disclose.¹¹

The exhibiting of fraudulent documents¹² or attesting of an instrument without seeing it signed¹³ is a representation. A recital of fact in a written memorandum of a contract is also regarded to be in the nature of a representation;¹⁴ however, writing or presenting an insufficient funds check is not a false statement or misrepresentation as a check is neither a statement nor a representation.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

A statement that misleadingly omits critical facts is a fraudulent misrepresentation irrespective of whether the other party has expressly signaled the importance of the qualifying information. [Universal Health Services, Inc. v. U.S., 136 S. Ct. 1989 \(2016\)](#).

A person conveying a false impression by disclosing some facts and concealing others is guilty of fraud, even though the statement is true as far as it goes; the concealment is in effect a false representation that what is disclosed is the whole truth. [Croslin v. Enerlex, Inc., 2013 OK 34, 308 P.3d 1041 \(Okla. 2013\)](#).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Lilliston v. Regions Bank, 288 Ga. App. 241, 653 S.E.2d 306 \(2007\)](#).
- ² [Jewell v. Seaboard Indus., Inc., 667 So. 2d 653, 28 U.C.C. Rep. Serv. 2d 168 \(Ala. 1995\)](#); [Kuhn v. Seaton, 187 Kan. 106, 353 P.2d 959 \(1960\)](#); [Weikel v. Sterns, 142 Ky. 513, 134 S.W. 908 \(1911\)](#); [Nota Const. Corp. v. Keyes Associates, Inc., 45 Mass. App. Ct. 15, 694 N.E.2d 401 \(1998\)](#).
- ³ [Jewell v. Seaboard Indus., Inc., 667 So. 2d 653, 28 U.C.C. Rep. Serv. 2d 168 \(Ala. 1995\)](#); [Thrifty-Tel, Inc. v. Bezenek, 46 Cal. App. 4th 1559, 54 Cal. Rptr. 2d 468 \(4th Dist. 1996\)](#); [Nota Const. Corp. v. Keyes Associates, Inc., 45 Mass. App. Ct. 15, 694 N.E.2d 401 \(1998\)](#).
- ⁴ [Kuhn v. Seaton, 187 Kan. 106, 353 P.2d 959 \(1960\)](#); [Eastern Trust & Banking Co. v. Cunningham, 103 Me. 455, 70 A. 17 \(1908\)](#); [McCray Refrigerator Co. v. Uramoto, 79 Nev. 294, 382 P.2d 600, 96 A.L.R.2d 1339 \(1963\)](#).
- ⁵ [Thrifty-Tel, Inc. v. Bezenek, 46 Cal. App. 4th 1559, 54 Cal. Rptr. 2d 468 \(4th Dist. 1996\)](#); [Brody v. Bock, 897 P.2d 769 \(Colo. 1995\)](#); [Travers v. Spidell, 682 A.2d 471 \(R.I. 1996\)](#); [Claman v. Popp, 2012 WY 92, 279 P.3d 1003 \(Wyo. 2012\)](#).
- ⁶ [Jane Doe 43C v. Diocese of New Ulm, 787 N.W.2d 680 \(Minn. Ct. App. 2010\)](#); [National Union Fire Ins. Co. of Pittsburgh, P.A. v. Red Apple Group, Inc., 273 A.D.2d 140, 710 N.Y.S.2d 48 \(1st Dep't 2000\)](#); [Hardin v. KCS Intern., Inc., 199 N.C. App. 687, 682 S.E.2d 726 \(2009\)](#).
- ⁷ [Kmart, Inc. v. Asaro, 751 So. 2d 513 \(Ala. Civ. App. 1999\) \(conduct\)](#); [Thrifty-Tel, Inc. v. Bezenek, 46 Cal. App. 4th 1559, 54 Cal. Rptr. 2d 468 \(4th Dist. 1996\)](#); [Haberstick v. Gordon A. Gundaker Real Estate Co., Inc., 921 S.W.2d 104 \(Mo. Ct. App. E.D. 1996\)](#); [Claman v. Popp, 2012 WY 92, 279 P.3d 1003 \(Wyo. 2012\)](#).
- ⁸ [Smallwood v. Fisk, 146 Or. App. 695, 934 P.2d 557 \(1997\)](#).
- ⁹ [BCCI Holdings \(Luxembourg\) Societe Anonyme v. Khalil, 56 F. Supp. 2d 14 \(D.D.C. 1999\)](#), *aff'd in part, rev'd in part and remanded on other grounds*, [214 F.3d 168 \(D.C. Cir. 2000\)](#) (applying District of Columbia law);

Seckinger-Lee Co. v. Allstate Ins. Co., 32 F. Supp. 2d 1348 (N.D. Ga. 1998) (applying Georgia law); Doe v. Archdiocese of St. Paul & Minneapolis, 801 N.W.2d 203 (Minn. Ct. App. 2011), review granted, (Sept. 20, 2011) and rev'd on other grounds, 817 N.W.2d 150 (Minn. 2012).

¹⁰ Banco Nacional Ultramarino, S.A. v. Chan, 169 Misc. 2d 182, 641 N.Y.S.2d 1006 (Sup 1996), order aff'd, 240 A.D.2d 253, 659 N.Y.S.2d 734 (1st Dep't 1997).

For the purpose of establishing a negligent misrepresentation claim, the element of an affirmative representation by defendant may consist of nonverbal conduct under certain circumstances. Shaw v. Brown & Williamson Tobacco Corp., 973 F. Supp. 539 (D. Md. 1997) (applying Maryland law).

As to what constitutes concealment and when a duty to disclose exists, see §§ 194 to 226.

¹¹ Harding County, S.D. v. Frithiof, 575 F.3d 767 (8th Cir. 2009) (applying South Dakota law).

¹² Eisert v. Town of Hempstead, 918 F. Supp. 601 (E.D. N.Y. 1996) (applying New York law); Bundesen v. Lewis, 291 Ill. App. 83, 9 N.E.2d 327 (1st Dist. 1937), judgment rev'd on other grounds, 368 Ill. 623, 15 N.E.2d 520 (1938) (maps or plats).

¹³ McCray Refrigerator Co. v. Uramoto, 79 Nev. 294, 382 P.2d 600, 96 A.L.R.2d 1339 (1963).

¹⁴ Corry v. Sylvia y Cia, 192 Ala. 550, 68 So. 891 (1915).

¹⁵ Wadsworth, Inc. v. Schwarz-Nin, 951 F. Supp. 314 (D.P.R. 1996) (applying Puerto Rico law).

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